



Wholesale Broadband Services – 50 and 100 Mbps

Non-Statutory Draft Decision

Channel Islands Competition and Regulatory Authorities

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1. INTRODUCTION

- 1.1 JT (Jersey) Limited ('JT')¹ has invested in a fibre to the home ('FTTH') network in Jersey and is actively seeking to reach its stated objective of making Jersey a "gigabit island".
- 1.2 Over recent years JT's retail division ('JT Retail') has progressively moved its retail customers to higher speed broadband services. This has mainly been achieved by providing upgrades to its customers and by uplifting the lower speed retail services.
- 1.3 In Jersey, retail competition for broadband services relies on the provision of 'upstream' wholesale services by JT. Both Sure (Jersey) Limited ('Sure') and Home Net Limited (**Home Net**) compete with JT Retail in the retail broadband market by purchasing wholesale services from JT's wholesale division ('JT Wholesale').
- 1.4 Alongside of moving its retail customers to higher speeds JT has also made changes to its wholesale product portfolio which has resulted in a similar effect, that is, JT's wholesale customers have had to purchase higher speed wholesale products for its end users (retail consumers).
- 1.5 The Jersey Competition Regulatory Authority (the '**JCRA**')² (the '**Authority**') has cause for concern that, in making changes to its wholesale broadband portfolio, JT is failing to take into account two key factors:
- First, Sure has requested that JT Wholesale provides it with wholesale products to meet its customers' demands for slower broadband speeds, and
 - Second, the States of Jersey Telecoms Policy is clear in its objective to ensure that there is competition based on differentiated retail products in Jersey.
- 1.6 The Authority issued a Call for Information³ in order to seek input from stakeholders on what the Authority considers to be an important matter. The Authority has considered the responses to that Call for Information and is issuing this Draft Decision as the next stage in its regulatory process on this matter.

¹ JT has two divisions, one that provides retail services and the other that provides wholesale services. Whilst the divisions are separate, they are part of the same corporate entity.

² The Jersey Competition Regulatory and the Guernsey Competition and Regulatory Authority (the '**GCRA**') are collectively known as the Channel Islands Competition and Regulatory Authorities ('**CICRA**')

³ Wholesale Broadband Service – 50 and 100 Mbps, Call for Information, CICRA 19/08, 25 February 2019

2. PURPOSE OF THE CONSULTATION PROCESS

2.1 The Call for Information consulted on whether JT Wholesale should provide wholesale broadband services to:

- Meet the requirement for slower speeds by its wholesale customers, and
- Meet the stated objectives of the States of Jersey Policy.

2.2 The Authority issued its Call for Information to seek the views of stakeholders on the following issues in particular:

- (a) should JT Wholesale provide wholesale broadband services at speeds lower than its current *Standard 250 Mbps down and 50 Mbps up* product (the '**250 Mbps product**')?
- (b) if yes:
 - What speeds should be introduced?, and
 - At what wholesale price?
- (c) in addition, if the responses to the Call for Information concluded that slower speed wholesale products should be included in JT Wholesale's portfolio, when should these products be available to JT's wholesale customers?

2.3 The Authority is publishing this Draft Decision, which sets out its position having considered stakeholders' responses, which will then be the subject of this further consultation.

2.4 **Disclaimer** – *This document does not constitute legal, technical or commercial advice; the Authority is not bound by this document and may amend it from time to time. This document is without prejudice to the legal position or the rights and duties of the Authority to exercise regulatory powers generally.*

3. STRUCTURE OF THIS DOCUMENT

3.1 This document constitutes a Non-Statutory Draft Decision. The document sets out the conclusions which the Authority has reached, having taken full account of information gathered in the Call for Information process with stakeholders.

3.2 The document is structured as follows:

Section 4	Outlines the legal framework
Section 5	Sets out the Authority's consideration of the responses to the Call for Information
Section 6	Contains the Draft Decision
Section 7	Sets out the regulatory process

3.3 Respondents are requested to comment on the Draft Decision. All comments should be submitted before 5.00pm on 12 June 2019 to:

Jersey Competition Regulatory Authority
2nd Floor Salisbury House, 1-9 Union Street
St Helier, Jersey, JE2 3RF

Email: info@cicra.je

3.4 All comments should be clearly marked 'Comments on T1453J Non-Statutory Draft Decision – 50 and 100 Mbps Broadband Access'.

3.5 In line with CICRA's consultation policy, CICRA intends to make responses to the Draft Decision available on the CICRA website, the combined website of the GCRA and JCRA. Any material that is confidential should be put in a separate annex and clearly marked as such so that it may be kept confidential. CICRA regrets that it is not in a position to respond individually to the responses to this consultation.

4. LEGISLATIVE BACKGROUND

Legal Background

4.1 Article 16 of the Telecommunications (Jersey) Law (2002), (the ‘**Telecoms Law**’) provides that the Authority may include in licences such conditions necessary to carry out its functions. The Telecom Law specifically provides that licences can include:

- Conditions for the prevention or reduction of anti-competitive behaviour; and
- Conditions allowing the Authority to make determinations.

Regulatory Framework

4.2 In January 2019, following a review of the markets for telecoms services in Jersey, the Authority made the decision with respect to significant market power (**‘SMP’**) in wholesale broadband markets.

4.3 Condition 33.2 of the licence to JT provides that:

“The JCRA may determine the maximum level of charges the Licensee may apply for Telecommunications Services within a relevant market in which the Licensee has been found to be dominant. A determination may”:

- (a) Provide for the overall limit to apply to such Telecommunications Services or categories of Telecommunications Services or any combination of Telecommunications Services;*
- (b) Restrict increases in any such charges or to require reductions in them whether by reference to any formula or otherwise, or*
- (c) Provide for different limits to apply in relation to different periods of time falling within the periods to which the determination applies.”*

4.4 This condition therefore allows the Authority to regulate the prices that JT charges for telecommunication services in a way and for a time that it deems appropriate, provided that JT has a dominant position in the relevant market in which those services are supplied.

4.5 Condition 34.1(c) of JT’s licence is designed to protect fair competition in the markets in which JT operates, and provides as follows:

“The Licensee shall: ...

- (c) comply with any direction issued by the JCRA for the purpose of preventing any market abuse or any practice or arrangement that has the object or effect of preventing, restricting or distorting competition in the establishment, operation and maintenance of Licensed Telecommunications Systems or the provision of Telecommunications Services.*

- 4.6 This condition allows the Authority to give directions to JT, including in relation to the prices that it charges.

5. CONSIDERATION OF THE RESPONSES TO THE CALL FOR INFORMATION

5.1 In considering whether there is a requirement to introduce slower wholesale broadband products the Authority has taken into account the following factors:

- The States of Jersey Policy;
- JT Wholesale's uplift of its wholesale broadband services;
- JT Wholesale's notification of an increase in price of its 250 Mbps wholesale broadband service;
- Sure's request for the provision of a Bitstream service by JT Wholesale;
- A finding of SMP on JT; and
- The Authority's duties.

This section considers each of these factors in turn.

States of Jersey Policy

5.2 A States of Jersey Telecoms Strategy Action Plan, developed by the Digital Policy Unit within the Chief Minister's Department, (the '**Action Plan**'), set a clear action to the Authority: "*As appropriate, direct JT to offer fibre wholesale products to allow for differentiated retail services*".

5.3 The Action Plan is in line with the recommendations made in the Telecommunications Strategy dated 9 January 2018⁴ (the '**Telecoms Strategy**') and was also developed through discussion with the report's authors (Oxera), the Authority and a number of other Government departments. This was, for the Authority, a significant milestone. This will have been the first time that the Authority has had a clear, published policy on which to base its work plan. The Authority has taken a number of steps to ensure that its strategies and work plan align with the published policy.

5.4 The Telecoms Strategy clearly states in Policy Principle 2 that:

"CICRA should ensure that JT supplies other operators with wholesale access ... which allow access seekers to compete based on differentiated retail services".

The full text of Policy Principle 2 is provided below for completeness.

Policy Principle 2
Promote retail competition (not network competition) as the most effective way of delivering the benefits of next generation connectivity to consumers and businesses (section 4.2)

4

<https://www.gov.je/SiteCollectionDocuments/Government%20and%20administration/R%20A%20telecoms%20strategy%20for%20Jersey%20Oxera%20December%202017%2020180105%20TH.pdf>

6. CICRA should ensure that JT supplies other operators with wholesale access to the Gigabit network on a fair, reasonable and non-discriminatory (FRAND) basis, and that wholesale access seekers get access to wholesale products, which allow access seekers to compete on differentiated retail services.
 - a. This FRAND access should also include fibre backhaul for mobile services
7. CICRA should use this regulatory focus on the Gigabit network to review and publish its prioritisation principles and outline additional resources required, if any, to conduct its duties, including implementing telecoms strategy. CICRA should ensure that it uses these principles to determine which cases to pursue and to clearly explain its decisions.

JT's Uplift of wholesale broadband services

- 5.5 On 24 November 2016 JT published a Revised Information Notice of a Wholesale Broadband Product Change. This notice included the following changes to the wholesale product portfolio:

Standard Fibre Broadband Products

The standard 50 Mbps down and 1 Mbps up fibre product will increase to 100 Mbps down and 10 Mbps up.

Superior Fibre Broadband Products

The superior 50 Mbps down and 1 Mbps up fibre product will increase to 100 Mbps down and 20 Mbps up and the superior 50 Mbps down and 5 Mbps up fibre product will increase to 100 Mbps down and 20 Mbps up.⁵

- 5.6 On 16 February 2018 JT published its Wholesale Broadband Roadmap⁶ (the '**Roadmap**'). The Roadmap included JT's Plan of Record for 2018 which included a 250 Mbps down and 50 Mbps up service (the '**250 Mbps service**') but did not include the 100 Mbps down and 10 Mbps up service (the '**100 Mbps service**') that at the time was in the market. JT stated that it would replace the 100 Mbps service with the 250 Mbps service from 28 May 2018.
- 5.7 The Authority considered the objection raised by Sure under its powers granted under the Telecoms Law and JT's Class III Telecommunications Licence issued under the Telecoms Law.
- 5.8 The Authority came to the conclusion that, in principle, it was in agreement with the issues raised by Sure. However, the Authority concluded that it did not have sufficient powers to request JT, potentially by way of a direction, to retain the 100 Mbps service that it had proposed to uplift. That decision, albeit taken reluctantly was based on the following logic.
- 5.9 JT Wholesale in its notification stated that it was in effect replacing its 100 Mbps service with 250 Mbps service. The 250 Mbps service was to be offered at the same wholesale price as the 100 Mbps.

⁵ Revised Information Notice, Wholesale Broadband Product Changes, JT, 24 November 2016

⁶ Information Notice, Wholesale Broadband Roadmap 2018 – 2020, JT, 16 February 2018

- 5.10 This resulted in the Authority concluding that it would not proceed with any potential licence condition breach by JT due to the Authority's prioritisation principles.

JT's Notification of a change of wholesale pricing

- 5.11 On 9 November 2018 JT Wholesale published an LC33 notification of an intended wholesale price change. The notification stated that the 250 Mbps service monthly wholesale cost would increase from £17.84 to £19.45 with effect from 28 December 2018. This is a 9%⁷ price increase.

Sure's Request for Bitstream

- 5.12 The Authority's approach to the review of whether a potential re-introduction of services is required is a short-term priority. Parallel to this consultation process is a separate work stream pursuant to which the Authority is assessing the need to formally introduce wholesale Bitstream services in the medium term. For the purposes of the Call for Information the Authority did not consider such wholesale option further but simply noted that a separate workstream was underway with a longer term solution.

Finding of SMP

- 5.13 In May 2018, at the request of Sure and JT, the Authority commenced a market review of the Wholesale Broadband Market in Jersey. A review of Guernsey was undertaken simultaneously. The Authority engaged SPC Network to carry out this review and to advise the Authority.

- 5.14 The market review found JT to have SMP in the provision of wholesale broadband services in Jersey.

The review defined the market as:

"Wholesale access to the Internet at a fixed location using an access network based on fibre or cable or using the 4G and ultimately 5G wireless access network via a fixed device in the whole Bailiwick of Jersey."

And the finding of dominance as:

"JT has Significant Market Power on the market as defined".

- 5.15 The Authority completed its process on this matter by issuing a Final Notice on 9 January 2019⁸ and an Information Notice on 30 January 2019⁹.

⁷ $(£19.45 - £17.84) / £17.84 = 0.0902$

⁸ Broadband Market, Market Review, Final Decision, CICRA 19/01, 9 January 2019

⁹ Information Notice, Notice of Final Decision, CICRA 19/03, 30 January 2019

The Authority's Duties

- 5.16 The Authority has a number of duties set out in the Telecommunications (Jersey) Law (2002). These include a primary duty to perform its functions under the law in such manner as it considers is best calculated to ensure that (so far as in its view is reasonably practicable) such telecommunications are provided both within Jersey, and between Jersey and the rest of the world, as satisfy all current and prospective demands for them, wherever arising. In addition to its primary duty, the duties of the Authority include the requirement to:
- (a) act in such manner as it considers is best calculated to protect and further the short-term and long-term interests of users within Jersey of telecommunication services and perform the, wherever it considers it appropriate, by promoting competition among persons engaged in commercial activities connected with telecommunications in Jersey; and
 - (b) perform its functions in such manner as it considers is best calculated to promote efficiency, economy and effectiveness in commercial activities connected with telecommunications in Jersey so as to further the economic interests of Jersey.
- 5.17 The Telecoms Law also provides for a licensing regime. JT's licence contains a fair competition condition¹⁰, which requires that JT shall not abuse any position of Significant Market Power; and shall comply with any direction issued by the Authority for the purpose of preventing any market abuse in the provision of telecommunication services.
- 5.18 The Authority is aware of Sure's request for the 50 and 100 Mbps services, such a request being based on demands for the product from Sure's own customers. As a result of the 50 and 100 Mbps services being uplifted, consumers suffer from less choice, and the potential for the efficiencies and lower prices likely to be brought through competition in the telecommunications sector is lost. The Authority is of the view that this is a significant issue with risks to the wider economy of Jersey that must be taken into consideration when looking at broadband solutions in the Jersey market. The potential reintroduction of a 50 Mbps and 100 Mbps wholesale broadband product could thus provide retail broadband suppliers with the opportunity to provide differentiated services, by speed and price in the short term.
- 5.19 Taking all of these factors into account the Authority concluded that there could be a potential requirement to introduce slower speeds wholesale broadband services and issued its Call for Information to further inform its considerations on this matter.

Responses to Call for Information

- 5.20 The next section considers the options for the potential introduction of slower speed services by consideration of the responses received to the questions set out by the Authority in its Call for

¹⁰ Licence Condition 34

Information. Responses were received from four parties – JT, Sure, Home Net and Clear Mobitel (Jersey) Limited (**Clear Mobitel**).

DOES THE STATES OF JERSEY POLICY SEEK DIFFERENTIATION OF RETAIL SERVICES?

Question 1 – Does the respondent agree that the States of Jersey Policy is clear in its statement requiring “that wholesale access seekers get access to wholesale products, which allow access seekers to compete based on differentiated retail services”? If the respondent has alternative views or evidence the respondent is asked to explain those and provide all of its analysis and assessment relating to this matter to inform the Authority’s considerations and next steps.

- 5.21 In its response, Sure considers that the States of Jersey policy is absolutely clear that JT should be supplying wholesale products that allow differentiated competition at the retail level as well as being provided on fair, reasonable and non-discriminatory terms (FRAND). Sure considers that such an approach would provide consumers in Jersey with *significantly increased choice*. Sure’s strategy *recognises* that not all customers need, want or may be able to afford a 1 Gbps broadband service from JT and that JT’s introduction of faster speeds cannot be done in such a way to disadvantage competitors and end users, for whom Sure considers that “*such increased speeds have no relevance*”. Sure stated that around the time of JT’s publication of its Wholesale Broadband Roadmap only around 1% of Jersey broadband customers were even using a tenth of that bandwidth. Sure’s position is that JT’s strategy of “*refusing to provide the wholesale access products that would enable OLOs to differentiate their retail offering is completely counter to the States of Jersey’s policy*”.
- 5.22 JT however considers that the States of Jersey policy is clear in that it requires JT to offer wholesale products that allow retail providers to offer differentiated retail services but that it is the definition of differentiated retail services that is open to interpretations with retail products being able to be differentiated by the addition of many different elements such as an email account, storage space of photos/documents, security settings e.g., Firewalls, additional content / TV packages, gaming packages, managed router, wifi extenders, contract length, data usage/caps, bundled together for a fixed monthly price.
- 5.23 JT stated that it differentiates its retail broadband products by adding a number of elements including data usage allowances, parental controls, access to FON wifi hotspots, managed router, contract length and by bundling of services.
- 5.24 JT considers that Sure and CICRA are *fixated* on speed being the only differentiating factor when there are many other elements that can be considered by the customer as differentiation. In addition JT’s experience is that *the vast majority of consumers* now wish to purchase a bundle of services at a set price per month and their choice is based on price, service and overall package value for money. JT quoting that 42% of its consumer base subscriber base subscribe to a bundle of services (broadband/landline/mobile).

- 5.25 JT's opinion is that speed has been (and continues to be) used as a differentiator in markets where broadband services are delivered using a mix of legacy broadband technologies because speed is the limiting factor with these technologies and therefore has been used to differentiate the offerings¹¹. With the exception of FTTH networks, speed is also a limiting factor owing to the performance of copper and COAX technologies for the last part of the connection to the customer's premises. JT believes that in Jersey it is in the enviable position of there being no such network limitations with speed being only limited by the equipment connected to the end of the fibre (currently 1 Gb per second).
- 5.26 JT's opinion is that Jersey benefits from a world-class FTTH network and all consumers in Jersey, irrespective of their broadband service provider, have access to a network with the fastest possible speeds, they should all benefit from the higher speeds. This should be their right and there should be no digital divide on speed.
- 5.27 In its response JT provided evidence of the high-speed retail products available in Singapore, this being relevant as both the incumbent operators in Singapore, and in Qatar, have moved their entire legacy base of customers to a fibre network. JT identified that all broadband offerings in Singapore are based on a bundle of services and are differentiated by the elements of the bundle, not by speed.
- 5.28 JT's view is that the Authority should be more concerned with affordability and should ensure that all Jersey consumers have access to an affordable fibre broadband service referring to Ofcom's recent consultation on "delivering the broadband universal service" where they have proposed an affordability safeguard of £45 per month for a minimum of 10 Mb per second download speed and at least 1 Mb per second upload speed. JT believes a safeguard would also be appropriate in Jersey to ensure that those on low incomes can afford access to fibre broadband service with the funding of such a subsidy should be discussed separately from this consultation. Such type of subsidy is not unusual in a full fibre market such as Singapore where they offer a subsidised fibre broadband conductivity to ensure there is no digital divide.
- 5.29 Clear Mobitel considers that the current arrangement only allows for price differentiation which it believes is not the intention of the States of Jersey policy which indicates a desire for "differentiated retail services". This would seem to embrace a wider definition of alternative methods of differentiated products such as being able to tailor services to, for example, privatisation of different traffic types. Clear Mobitel considers that it is clear that Sure is requesting a modification of the current retail minus product in order to compete only on price.
- 5.30 Home Net in its response considered that the States of Jersey policy is clear.

¹¹ For example, in the UK market there is a mix of ADSL, ADSL 2+, VDSL, Cable, Fibre to the Cabinet, GPON and FTTH networks.

The Authority's Analysis of Responses

- 5.31 JT's argument is that speed should not be considered as the differentiating factor and that in markets where a full fibre broadband network is in place there is evidence of other differentiating factors being implemented whilst speed is not a differentiating factor.
- 5.32 The Authority recognises that Jersey does benefit from a full fibre broadband network, as implemented by JT. The Authority also recognises the importance that other forms of differentiation can bring to competition in the market. However, the Authority considers two important factors in its consideration of this matter. First, it does not consider that the consumer market is creating the demand for very high speed services in Jersey as might be the case in other jurisdictions such as Singapore and Qatar. The demand for high speed services is driven by a number of factors including the maturity of the digital economy in the country. Evidence provided by JT and Sure demonstrates that consumers, at this point in time are not switching to higher speed services and indeed as put forward by Home Net and Sure in their responses, would actively consider taking speeds lower than JT's current entry level product. Second, JT is the incumbent network service provider in Jersey and its downstream customers have requested lower speed services to meet the demand of their retail customers. The Authority considers the approach taken by JT in removing lower broadband speeds results in customers having no alternative other than to increase speeds which might also lead to increased monthly costs to consumers.
- 5.33 JT argues in its response that evidence shows that the vast majority of consumers now wish to purchase a bundle of services at a set price per month and their choice is based on price, service and overall package value. The Authority does not disagree with this point, however this does not provide evidence that consumers are requesting higher speeds within the bundle, indeed the Authority believes that consumers would take a bundle of service where there was a choice of speed of service to be included in the bundle.
- 5.34 The Authority is concerned to the affordability of broadband services in Jersey. Affordability of service is one of the reasons why JT's wholesale customers are seeking to provide services to consumers at lower speeds with a lower price point than the retail services available from JT. As we consider later in this draft decision, JT's retail competitors are able to provide the evidence that they provide lower speed services to customers either to meet the needs of customers in terms of broadband usage or to meet the requirements for a lower cost service. The recent Ofcom consultation on "Delivering the Broadband Universal Service" is seeking to protect consumers from the high cost of broadband in areas that are currently under-served or not served by an effective broadband solution. The affordability safeguard cap of £45 per month for a minimum of a 10 Mbps download and at least 1 Mbps upload is to ensure that everyone can access an affordable broadband service. This is not a concern in Jersey where JT has fibre passing every property in Jersey and the vast majority of properties connected to the fibre network. The Authority agrees that any discussions relating to a subsidy is not part of this consultation.
- 5.35 Sure in its response argues that its retail strategy recognises that *"not all customers need, want – or indeed may be able to afford – a 1 Gbps broadband service"* and that the broadband changes being put in place in Jersey should not *"disadvantage competitors and, more importantly, end*

users, for whom such speed increases have no relevance” and that JT’s current strategy of not providing wholesale access products that allow OLOs to differentiate their retail offerings is “completely counter to the States of Jersey policy”.

- 5.36 The Authority interprets that Home Net agrees with the States of Jersey policy and the Authority’s opinion is that this should include the ability to differentiate services by speed.
- 5.37 The Authority has considered the response provided by Clear Mobitel. The Authority has interpreted Clear Mobitel’s response as the policy requirement for “differentiated retail services” would include alternative method of differentiating services including the ability to differentiate on speed of service.

The Authority’s Conclusion

- 5.38 The Authority supports the differentiation of products and does agree with JT that there are a number of ways that operators can differentiate their retail products. However, the Authority considers that consumers do not currently seek the higher speed services offered by JT. Indeed, the Authority considers that the approach taken by JT where it removes lower broadband speeds only leads to “forcing” customers to increase speeds which might also lead to increased monthly costs to consumers.
- 5.39 JT’s wholesale customers are actively seeking to address consumer demands for lower broadband speeds and JT has refused to agree to retain the 100Mbps service when it upgrades its service to the entry level 250Mbps, at the time JT’s wholesale customer objected to the upgrade and requested that the 100Mbps service be retained.
- 5.40 As a result of some comments from JT the Authority engaged with the States of Jersey policy makers to confirm that the differentiated retail products statement in the strategic plan did include the need for differentiation including speed. Following these discussions The Authority considers that the policy statement of the States of Jersey is clear and that the ability to differentiate a service by speed is one method of differentiation that should be available for OLOs. This would require JT to offer a range of wholesale speeds in agreement with its wholesale customers.

INTRODUCTION OF 100 MBPS SERVICE

Question 2 - Does the respondent agree that JT should be required to reinstate the 100 Mbps wholesale broadband service? If the respondent has alternative views or evidence respondent is asked to explain those and provide all of this analysis and assessment relating to this matter to inform the Authority’s considerations and next steps.

- 5.41 JT believes that in a full fibre world, broadband providers cannot rely on speed as the primary non-price source of competitive differentiation. JT considers that it has followed a carefully considered path to increased speeds as it has migrated from copper ADSL to FTTH. This migration has moved

Jersey consumers from a place where speed was limited by the copper infrastructure to a full fibre 1 Gbps capable line.

- 5.42 JT considers that speed was a factor when it was migrating copper services to fibre but that it is no longer an appropriate differentiator in a full fibre network. When JT started to roll out its FTTH network in 2012 it introduced speeds that mirrored its ADSL broadband services at the same wholesale price. The price and speed have evolved to where we are now with the last speed uplift occurring in May 2018 when JT migrated its final copper broadband services onto fibre and Jersey became the first jurisdiction in the world to only provide broadband on fibre.
- 5.43 JT contends that at every point during the migration of copper to fibre it ensured that the price of the entry level products remained affordable to consumers. This remains the case today, with the current pricing for a wholesale 250 Mbps FTTH broadband product at a similar level to the entry-level up to 20 Mbps ADSL wholesale broadband product in Guernsey. JT considers that its experience has been the key differentiating factor for the majority of customers is a package of services at a fixed price per month. Again evidenced by 42% of JT's consumer base subscribed to bundle services
- 5.44 JT considers that the differentiation of retail broadband services is down to the retail operator and its investment decisions. Real differentiation requires retail product investment in areas such as content, storage, route management, etc. JT believes that to date it has seen no investment from Sure in additional elements that would allow it to differentiate its product set.
- 5.45 It is therefore JT's view that Sure's request for lower speed wholesale broadband products is not driven by customer demand but is fundamentally down to the following decisions made by Sure:-
- (a) Sure's decision not to invest in the Bailiwick of Guernsey, and the Jersey FTTH network is highlighting the inadequacy of the Sure Guernsey broadband offering in terms of both speed and price. This decision is in contrast to most jurisdictions and most notably Sure's owner Batelco which is investing in FTTH in its home market of Bahrain.
 - (b) Sure's decision to provide 100Mbps routers to its Jersey customers when their broadband service was migrated from copper to fibre, when it should have used a full router subsidy provided by JT, to provide all of its customers with 1 Gbps compatible fibre routers. The Sure decision to try and benefit financially from a router subsidy instead of purchasing 1 Gbps routers for its customers, has left a number of Sure customers with a service limited to 100 Mbps when the wholesale service provided by JT's 250 Mbps at a minimum.
- 5.46 Sure stated in its response that it objected to JT's withdrawal of 100 Mbps wholesale broadband service in 2018 as it believes that JT was not acting in a way that took account of OLO's requirements or the States of Jersey Telecom strategy. Sure considers that from JT's own admission from 2018, there appears to be almost entirely no customer demand-based requirement to move to 1 Gbps speed for all. This aligns with the States of Jersey policy of ensuring access to 1 Gbps speed is available, rather than being a minimum requirement for 1 Gbps. Sure

therefore fully supports the reintroduction of services align with actual customer requirements rather than services are not supportive of competition in Jersey.

- 5.47 Sure considers that the situation in Jersey aligns with its own experience in Guernsey where one can see that there is significant demand for lower priced services, rather than headline speeds. This is evidenced by the fact that, despite Sure's up to 40 Mbps service being available to over 75% the market, less than 30% of broadband customers have taken the faster service, choosing instead to take the entry-level in "basic" broadband service with maximum attainable speeds of 20 Mbps.
- 5.48 Sure would propose that the upload speed on the 100 Mbps service should be 10 Mbps (as it had been before the service was withdrawn), along with a contention ratio of 40:1.
- 5.49 Home Net in its response agreed with the Authority.
- 5.50 Clear Mobitel commented that, whilst JT has invested heavily in its FTTH network and as a result has sought to deliver the highest speeds to the consumer, it has come with an increase of both wholesale and retail price for the broadband products. There are consumers which do not need such a high speed, for example those that use broadband mostly as a communication medium. For such consumers the higher speed now implemented universally by JT has no benefit, indeed they may still be using legacy routers which are unable to deliver the higher speeds of the uplink. Therefore Clear Mobitel can see the financial benefit to consumers that the reintroduction of the lower speed options could bring and supports the proposal.

The Authority's Analysis of Responses

- 5.51 JT relies on the argument that consumers will benefit, in its opinion, from accessing higher speeds and that a differentiating factor for consumers is the bundling of services (broadband/landline/mobile). In its response JT does not provide any evidence of consumer demand for higher speeds that resulted in it making the decisions relating to increasing the speeds of its entry level products. On the contrary there is no evidence that JT has removed the lower speeds because the service is no longer required as consumers have migrated, by choice, to a higher speed service.
- 5.52 JT raised two points as to why it considers Sure is requesting lower wholesale broadband speeds in Jersey. First, regarding JT's statement that Sure has failed to invest in Guernsey, the Authority is of the view that whilst Sure has taken the decision to continue to base its broadband services on its copper network it has invested in increasing end user speeds. The arguments put forward by Sure includes evidence that its consumers are seeking speeds which are not at the level of the speeds provided by JT. The reference to Batelco should reflect the situation that Batelco is facing a legal separation and in May 2016 the government approved a National Telecommunications Plan (NTP4) which set out key targets which included among other things, 95% of all households and 100% of all businesses and public radio communications states in the Kingdom to have access to affordable, reliable and secure ultra-fast broadband services, with a downstream data rate of at least 100 Mbps for households and 1 Gbps for business and radio sites. The need was identified to ensure that Bahrain is ranked in the top 20 countries globally when it comes to key international telecommunications indices. Second, regarding Sure's investment in routers, the Authority does

not consider that this issue is a key factor to the consideration of whether the 100 Mbps service is re-introduced. The responses from JT's wholesale customers clearly states that, in their opinion, there is a requirement for the lower speed services.

- 5.53 Sure argues that, based on its experience in Guernsey there is *significant* demand for lower priced service as opposed to headline speeds for services with the majority of its customers in Guernsey taking its basic broadband service with the maximum attainable speed of 20 Mbps.
- 5.54 Sure proposes that the 100 Mbps product be provided with 10 Mbps upload speed and a contention ratio of 40:1.
- 5.55 Home Net agrees that the 100 Mbps product should be re-introduced by JT.
- 5.56 Clear Mobitel puts forward its view that consumer might be demanding lower speeds to reflect how they use broadband based services and that the higher speeds provide no benefits to a proportion of the consumer base. Accordingly, the re-introduction of the 100 Mbps service could lead to financial benefits to some consumers.

The Authority's Conclusion

- 5.57 It is clear from the wholesale customers of JT (Sure and Home Net) that there is a requirement to reintroduce the 100 Mbps service which is based on the end-user demand for lower speeds. The Authority therefore concludes that a 100 Mbps service should be re-introduced by JT. The specific details of the product will be defined in later stages of this consultation process.

INTRODUCTION OF 50 MBPS SERVICE

Question 3 - Does the respondent agree that JT should be required to introduce a 50 Mbps wholesale broadband service? If the respondent has alternative views or evidence respondent is asked to explain those and provide all of this analysis and assessment relating to this matter to inform the Authority's considerations and next steps.

- 5.58 JT refers to its answer to Q2. The Authority does not set out that response again here but does take the response into account in its assessment.
- 5.59 Sure agreed with the proposal stating that the introduction of a 50 Mbps wholesale service would also be consistent with the policy aim of supporting differentiated retail competition. Same justifications for this lower speed product apply as for the 100 Mb per second service, in terms of the significant demand it sees for lower priced services, providing speeds are perfectly adequate for the needs of the vast majority of customers. Sure would propose that the upload speed on the service be set at 5 Mbps and contention at 40:1 (in line with JT's other consumer-based broadband services).
- 5.60 Home Net agreed with the proposal to introduce a 50 Mbps wholesale service.
- 5.61 Clear Mobitel in its response stated that JT's initial FTTH service was a 50 Mbps download offer and therefore technically there is no difficulty in throttling speed on a contended broadband

service, therefore there is no reason why JT could not reintroduce this version if there is sufficient demand from wholesale clients.

The Authority's Analysis of Responses

- 5.62 As with the previous question, JT does not provide any evidence of consumer demand for higher speeds that resulted in it making the decisions relating to increasing the speeds of its entry level products. On the contrary there is no evidence that JT has removed the lower speeds because the service is no longer required as consumers have migrated, by choice, to a higher speed service.
- 5.63 Sure and Home Net, as wholesale customers of JT, consider that there is sufficient consumer demand for a 50 Mbps to be available in the market and this position was supported by Clear Mobitel.

The Authority's Conclusion

- 5.64 In order to support effective competition in the retail market and to support the demands that have been expressed by JT's wholesale customers, the Authority concludes that a 50 Mbps service should be introduced by JT. The specific details of the product will be defined in later stages of this consultation process.

WILL THE INTRODUCTION OF 50 AND 100 MBPS SPEED BE SUFFICIENT TO SUPPORT DIFFERENTIATED RETAIL COMPETITION?

Question 4 - Does the respondent consider that, if JT includes (a) the 100 Mbps and (b) the 50Mbps in its wholesale broadband product portfolio, this would meet the respondent's requirements for wholesale products in order to effectively compete in the market with differentiated retail services? If the respondent has alternative views or evidence respondent is asked to explain those and provide all of this analysis and assessment relating to this matter to inform the Authority's considerations and next steps.

- 5.65 JT refers to its answer to Q2. The Authority does not set out that response again here but does take the response into account in its assessment.
- 5.66 Sure considers that in the short-term the introduction of 50 and the re-introduction 100 Mbps services to the market would meet its immediate customer demands for speed that are significantly more aligned with customer requirements, however this must be at a reasonable price differential, and with sufficient wholesale margin to enable and encourage competition.
- 5.67 In the mid- to long-term, Sure would question the ability of this broader range of "white label" wholesale products meeting the States of Jersey policy statement to enable differentiated retail services. With the current, and expanding product portfolio, the main meaningful differentiation of the broadband service will be price. This would not compare well to Guernsey, where Sure already offers a broad range of wholesale products and is actively planning to expand that range (i.e. the exact opposite of what JT is currently intent on doing in Jersey - contracting this range to just one speed for consumers).

- 5.68 Sure is concerned that whilst a short-term fix could be delivered, JT could in future rollback these changes, or significantly amend the wholesale catalogue to again reduce differentiation opportunities in the market.
- 5.69 Home Net disagreed with the Authority, stating that it believes that it can prove through customer uptake that there is a requirement for 20 Mbps, 10 Mbps and even a 5 Mbps service. Home Net has 2067 customers taking the services currently via its alternative product sets.
- 5.70 Clear Mobitel considers that market differentiation by price is the only effective competition in a retail-minus white label market. Clear Mobitel would agree that this would initially provide consumers with more choice and could be implemented earlier than a Bitstream services. Early introduction would enable more consumer choice without the inevitable delays that will be associated with the development of Bitstream.

The Authority's Analysis of Responses

- 5.71 As with the questions 2 and 3, JT does not provide any evidence of consumer demand for higher speeds that resulted in it making the decisions relating to increasing the speeds of its entry level products. On the contrary there is no evidence that JT has removed the lower speeds because the service is no longer required as consumers have migrated, by choice, to a higher speed service.
- 5.72 Sure, for the short-term considers that the 50 and 100 Mbps would meets its requirements. Regarding Sure's concerns relating to JT's "rolling back" these changes, the Authority hopes that these concerns are addressed by Questions 9 and 10 of this Call for Information. The concerns expressed by Sure with regards to the mid to longer term wholesale products, the Authority would consider that the introduction of a Bitstream service by JT should go a long way to alleviate such concerns.
- 5.73 Whilst Home Net and Clear Mobitel agreed to the introduction of the 50 and 100 Mbps service Home Net expressed a requirement for three wholesale products with even lower speeds. Whilst the Authority considers that Home Net is confident in the requirement for these product owing to the evidence that it has in excess of 2000 customers on its own service at those speeds the Authority is prioritising, at this point in time, the introduction of the 50 and 100 Mbps services. If and when these services are implemented and following the introduction of Bitstream by JT Home Net should consider whether it still requires these products as stand alone wholesale products from JT. Home Net should then request them directly from JT as a wholesale customer. Obviously Home Net is within its rights to request these products from JT at any time under its agreement with JT.

The Authority's Conclusion

- 5.74 The Authority considers that for the short term the introduction of the 50 and 100 Mbps services should meet the demands of OLOs. However, the Authority is interested to note the evidence provided by Home Net with regards to its requirement for speeds less than 50 Mbps and would be supportive of Home Net requested these speeds directly from JT.

- 5.75 The Authority considers that the introduction of a Bitstream service by JT should enable all OLOs to offer differentiation of services, including the ability to differentiate by speed. If the introduction of Bitstream by JT fails to meet the requirements of OLOs then the Authority would if necessary consider further consultations on the differentiation of services to meet the requirements of OLOs, consumers and the States of Jersey policy.

REQUIREMENTS FOR THE INTRODUCTION OF 50 AND 100MBPS SERVICES

Question 5 - Does the respondent agree with the Authority's conclusion that the potential introduction of (a) a 100 Mbps and (b) a 50 Mbps services does not require any product development and impacts only on systems? If the respondent has alternative views or evidence respondent is asked to explain those and provide all of this analysis and assessment relating to this matter to inform the Authority's considerations and next steps.

- 5.76 JT in its response stated that the introduction of 100Mbps and/or 50Mbps service will require JT to carry out the following development:-
- Addition of new wholesale tariffs in its billing system;
 - Addition of new offers to its wholesale portal (this requires external development resource);
 - Addition of new profiles in the provisioning system;
 - Billing testing / revenue assurance (2 months);
 - Margin squeeze assessment of the new offers;
 - Issue Licence Condition 33 wholesale notice 30 working days in advance of products being introduced, and
 - Issue Licence Condition 33 retail notice 30 working days in advance of products being introduced (assuming that JT wish to offer these retail products).
- 5.77 From Sure's perspective it would expect JT's re-introduction of 50 and 100 Mbps to require little more than configuration changes to existing systems and that this would effectively be 'cloning' existing products and amending features as required. Sure considers that this is made easier owing to the fact that both the 50 and 100 Mbps speeds have previously existing in JT's broadband portfolio. The work would be completed by in-house staff from its Billing and Technology teams.
- 5.78 Sure highlighted it's experience of working with JT in the development of WLR and that it would anticipate JT claiming that the required reconfiguration work on its broadband services would be significant, but we would draw attention to the numerous changes JT chooses to make for itself with its many product changes and promotions, with a minimum of five such events having occurred already this year (according to JT's licence condition 33 notification).
- 5.79 Home Net agreed that these products have both been available until the forced increase in speeds by JT therefore should be reinstated easily.
- 5.80 Clear Mobitel also considered that this would merely be a reintroduction of earlier products for which the parameters are well understood.

The Authority's Analysis of Responses

- 5.81 All parties, including JT, note that in the main this is a "systems based" introduction of a product, based on either existing or previous products that JT wholesale had in the market in recent years.
- 5.82 Whilst JT provided a list of tasks that would be required to be undertaken (including tasks that would require external resources), the list did not raise any issues that would mean that the introduction of these services would be a major change for JT.

The Authority's Conclusion

- 5.83 The evidence provided by JT shows that the introduction of these services is based on system changes along with administrative activities such as the confirmation that pricing does not effect a margin squeeze and that the relevant notifications are published in line with JT's licence conditions.

TIMESCALE TO INTRODUCE 50 AND 100 MBPS SERVICES

Question 6 - Does the respondent consider that if a decision were made by the Authority to direct JT Wholesale to introduce (a) the 100Mbps and (b) the 50 Mbps wholesale broadband services, this should be undertaken within 3 months of the completion of the Authority's statutory process on this matter? If the respondent has alternative views or evidence respondent is asked to explain those and provide all of this analysis and assessment relating to this matter to inform the Authority's considerations and next steps.

- 5.84 JT considers that new lower speed services could be provided within 3 months, however JT has committed to offering a wholesale Bitstream services which would allow retail broadband providers to develop their own retail products including slower speed options. JT believes it can develop a Bitstream product in a 6 month timeframe and therefore it does not believe that there is any requirements to introduce a 50Mbps or 100Mbps product as an interim solution.
- 5.85 Sure does not see a valid reason why these simple changes should take any longer than this to implement, especially as given they relate to the reintroduction of products previously offered by JT (with the minor amendment to allow for 5Mbps upload on the 50 Mbps variant). In addition, Sure would also need to make some configuration changes itself but expect to complete this work and carry out all required testing within 8 weeks following the completion of the Authority's statutory process.
- 5.86 Home Net believes that one month is sufficient as longer would continue to impact the less well-off and vulnerable people who are struggling to pay for these forced price increases.
- 5.87 Clear Mobitel noted that the reintroduction of these previously defined wholesale products should not pose a difficulty for JT.

The Authority's Analysis of Responses

- 5.88 Whilst the Authority acknowledges the position taken by Home Net it recognises the fact that the activities will require internal and external resources at JT, testing and compliance checking as well

as regulatory activities such as the LC33 notifications therefore an expectation of the work being completed in one month would not be achievable.

- 5.89 The Authority understands that JT is currently considering the introduction of a Bitstream service to meet the demands of OLOs. However at the time of this Draft Decision there are a number of outstanding questions including (a) when will the Bitstream service be launched?, (b) will the Bitstream service meet the requirements of all of JT's wholesale customers?, (c) what is the price of the Bitstream service and will these be acceptable to all of JT's wholesale customers?, and (d) will JT's wholesale customers continue to require a 50 and 100 Mbps service to be available alongside of the proposed Bitstream service? Therefore, until these and any other relevant questions are answered with regards to JT's proposed Bitstream product the Authority will continue with this consultative process on the introduction of the 50 and 100 Mbps service.

The Authority's Conclusion

- 5.90 On completion of the Authority's statutory process on this matter JT should introduce the 50 Mbps and 100 Mbps within 3 months.

WHOLESALE PRICES FOR 50 AND 100 MBPS SERVICES

Question 7 - Does the respondent agree that the potential 50 Mbps wholesale broadband service should be priced at £16.23 per month? If the respondent has alternative views or evidence respondent is asked to explain those and provide all of this analysis and assessment relating to this matter to inform the Authority's considerations and next steps.

- 5.91 JT does not agree that the 50Mbps product should be reintroduced with the pricing proposed of £16.23. JT's view is that if it is directed to introduce a 50Mbps product the pricing should be based on a benchmark with Guernsey wholesale prices. The pricing in Guernsey for the wholesale broadband up to 20Mbps product is priced at £17.69 per month. This pricing methodology has been used by the Authority when pricing wholesale products in the past and is therefore a tried and tested method.
- 5.92 Sure expressed its disappointment at the pricing proposed by the Authority compared to the current 250Mbps services, however in order to enable faster process it was willing to consider the price as a cap for the minimum duration (see responses to Q9).
- 5.93 Sure considers the price to be adequate for the recovery of wholesale costs by JT and to allow some limited differentiation to the market. However, based on the proposed price, Sure would not expect the take up to be as high as it had planned for. Sure considers that customers need a lever to encourage them to take action and a minimal reduction in wholesale (and therefore Sure's associated retail) price is unlikely to achieve that.
- 5.94 Home Net believes that the actual cost based upon the costs of an efficient operator and the fact that line rental is paying the access charge. However, for speed it agrees with the proposed price.
- 5.95 Clear Mobitel agrees that the proposed price point seems reasonable for such a product.

The Authority's Analysis of Responses

- 5.96 The Authority does not agree with JT's proposal that the price should be benchmarked on the Guernsey prices for similar services. Benchmarking does form a suitable proxy for price setting in certain circumstances. In this instance the price setting should take into account the differences in the networks (and therefore cost base) between Guernsey and Jersey and taking into account the price points that JT has used in its market for similar products the Authority considers that the pricing should be based on JT's product pricing.
- 5.97 The Authority notes that Sure would have expected a lower price. However, in the absence of a more detailed cost setting process that would increase the time to bring the products to market the Authority has to define a price that will create an opportunity for OLOs to differentiate on speed (and price) whilst ensuring that it allows JT to recover its costs.

The Authority's Conclusion

- 5.98 The Authority is mindful of the compromise taken to set a price in order to ensure that the product can be brought to market as quickly as possible. In the absence of any empirical evidence to demonstrate that the price is wrong and based on the acceptance of the price by all of the OLOs who responded to this Call for Information, the Authority concludes that the 50 Mbps wholesale broadband service should be priced at £16.23 per month.

Question 8 - Does the respondent agree that the potential 100Mbps wholesale broadband service should be priced at £17.84 per month? If the respondent has alternative views or evidence respondent is asked to explain those and provide all of this analysis and assessment relating to this matter to inform the Authority's considerations and next steps.

- 5.99 JT does not agree that a 100Mbps product should be reintroduced however if it is directed then the pricing should be based on a benchmark with the Guernsey wholesale prices. The pricing in Guernsey for the wholesale broadband up to 100Mbps product is priced at £36.38 per month. However, the corresponding wholesale price for the entry level 250Mbps broadband service in Jersey is £19.45, therefore the Guernsey price would not be appropriate. The wholesale price set should be somewhere between £17.69 and £19.45.
- 5.100 Sure was disappointed with the low discount proposed compared to the current 250 Mbps service however in order to enable faster progress on these services Sure would be willing to consider the proposed price as a cap for a minimum duration as outlined in its response to Question 9. Sure considers that the price to be reasonable for the recovery of costs by JT and would at least allow some limited differentiation to the market.
- 5.101 Home Net believes the actual cost based upon the costs of an efficient operator and the fact that line rental is paying the access charges. However, for speed it is inclined to agree. Home Net also believes that the 20 Mbps should be available at £13.62, 10 Mbps at £12.50 and a 5 Mbps service at £11.40 are all required.

- 5.102 Clear Mobitel considers that the proposed price point would seem to be reasonable for such a product.

The Authority's Analysis of Responses

- 5.103 For the reasons set out in its analysis for Question 7 the Authority does not consider that the setting of the price for the wholesale service should be based on Guernsey. In its response JT provided a range for the wholesale price of between £17.69 and £19.45. The price consulted on by the Authority falls within the range defined by JT.
- 5.104 The Authority notes that Sure would have expected a lower price. However, in the absence of a more detailed cost setting process that would increase the time to bring the products to market the Authority has to define a price that will create an opportunity for OLOs to differentiate on speed (and price) whilst ensuring that it allows JT to recover its costs.
- 5.105 The Authority notes the prices proposed by Home Net for the 20, 10 and 5 Mbps services that it proposed should be included. The Authority refers Home Net to its position taken for Question 4.

The Authority's Conclusion

- 5.106 The Authority is mindful of the compromise taken to set a price in order to ensure that the product can be brought to market as quickly as possible. In the absence of any empirical evidence to demonstrate that the price is wrong and based on the acceptance of the price by all of the OLOs who responded to this Call for Information the Authority concludes that the 100 Mbps wholesale broadband service should be priced at £17.84 per month.

HOW LONG SHOULD THESE PRODUCTS BE MADE AVAILABLE?

Question 9 - Does the respondent agree that it is appropriate that the potential wholesale price included in this Call for Information should remain fixed for a period of three years? If the respondent has alternative views or evidence respondent is asked to explain those and provide all of this analysis and assessment relating to this matter to inform the Authority's considerations and next steps.

- 5.107 JT considers that it should be allowed to recover the cost of its fibre investment and fixing prices for 3 years dependent on the price point chosen may not allow this to happen. There is no price control currently for wholesale broadband products and it would be inappropriate to fix the price of some products but not others. Additionally, Sure Guernsey has actively increased its xDSL wholesale broadband price charges on an annual basis in line with JT's Jersey price changes, on a depreciated copper network. If the Authority is minded to fix wholesale broadband prices in Jersey it should also consider fixing the price of wholesale broadband prices in Guernsey.
- 5.108 Sure agreed although it very much hopes that the implementation of a Bitstream services would occur well within a three-year period, therefore negating the need for JT to directly offer 50 Mbps and 100 Mbps speed variants
- 5.109 Sure would also require the wholesale pricing to be capped so as to actively create a more compelling price difference over time, as the price of higher bandwidth variants rise. This

approach would increase the differentiation of entry and mid-tier services compared to the premium and largely unrequired higher speed services. Sure considers that those customers with a true requirement for speeds over 100Mbps should not be subsidising other broadband users.

- 5.110 Without this future incentive for Sure and its customers to select a lower speed, the reintroduction of these services is unlikely to deliver any significant benefit to the market. Fixing these prices would provide certainty for OLOs in cost management and therefore the onward promises that we can make to our retail customers.
- 5.111 Committing to lower priced services in Jersey will not only support the States of Jersey Telecoms policy, it will also reduce the risk of digital exclusion from those members of society least able to carry the burden of ever-increasing broadband prices to deliver a service far in excess of the requirements of the vast majority of the islanders.
- 5.112 Home Net agreed with the Authority's proposal.
- 5.113 Clear Mobitel stated that whilst it is for the Authority to determine its policies with regard to its responsibilities to ensure a level playing field, it would prefer to see price stability in the wholesale market.

The Authority's Analysis of Responses

- 5.114 JT is concerned on being allowed to recover its costs of its fibre network and is concerned on the fixing of prices for three years absent of other price controls. The Authority is seeking to fill a gap in the market where it recognises that there is a demand for services to be supplied to the more price sensitive sector of the market. The Authority therefore seeks to provide some form of certainty and transparency of pricing for the proposed products.
- 5.115 JT will remain able to set its prices under the existing regulatory framework for its other broadband services.
- 5.116 The Authority also recognises that, following the introduction of the Bitstream service there might be a migration of customers from the 50 and 100 Mbps services to a Bitstream based service offer by the retail competitors to JT. Therefore the number of customers who remain on the 50 and 100 Mbps should not cause significant issues in allowing JT to continue to recover its costs of its fibre investment from a combination of all its fibre solutions.

The Authority's Conclusion

- 5.117 The Authority concludes that the wholesale price of the 50 and 100 Mbps service should remain fixed for a period of three years following launch. This position may however be reviewed should a Bitstream service be introduced and accepted by the OLOs.

FUTURE REMOVAL OF JT'S WHOLESALE BROADBAND SERVICES

Question 10 - Does the respondent agree that JT Wholesale should enter into a consultation process to remove the 50, 100 and 250 Mbps services only following the successful introduction of a Bitstream service? If the

respondent has alternative views or evidence the respondent is asked to explain those and provide all of this analysis and assessment relating to this matter to inform the Authority's considerations and next steps.

5.118 JT stated that it is its intention to introduce a Bitstream within the next 6 months. That being the case it can see no need for the re-introduction of speeds of 50 and 100 Mbps, as the retail operators will be able to set their own speed and will not be beholden to JT's wholesale roadmap. Therefore the removal of these products will not be relevant.

5.119 Sure agreed with the Authority. The lower speed wholesale services will be required until such time as effective retail differentiation can be achieved at the retail level.

5.120 Sure considers that any product withdrawal or material change to 50, 100 and 250 Mbps wholesale services should require consultation with OLOs. For the avoidance of doubt material changes would include at least the following:

- Speed (upload or download)
- Contention
- Introduction of, or changes to, Quality of Service or any form of traffic shaping
- Changes to one-off or recurring charges related to the provision of the service
- Detrimental changes to the SLA for the service.

This consultation process should not, however, be under the sole control of JT. Sure would propose that CICRA actively oversees the process, so as to minimise the risk of disputes and therefore potential disruption to end users' services.

5.121 The timing of any changes to services is key not to detrimentally impact OLOs or their retail customers, particularly those customers still within a minimum contract term. All retail operators are currently required by the Authority to provide a minimum of 60 days' notice of any changes of material detriment, so this needs to be taken into account.

5.122 Home Net disagreed stating that if true competition is required both services should be available, that way there is an option for any new entrants to the market.

5.123 Clear Mobitel stated that if a fully developed portfolio of cost-orientated Bitstream products is made available on reasonable terms, then it would agree that it would be appropriate for JT to engage with other operators to discuss the retirement of legacy retail-minus products.

The Authority's Analysis of Responses

5.124 The Authority notes JT's position but refers JT to the Authority's response to Question 6.

5.125 The Authority has considered the position put forward by Home Net. Whilst this is a valid position the Authority's position is that a consultation, following the introduction of the 50 and 100 Mbps services would be appropriate. If Home Net has the same position at that time then it would be for it to respond to any consultation in that manner.

- 5.126 The Authority agrees with the points made by Sure with regards to the material changes that should be considered as part of any consultation process by JT to remove 50 and 100 Mbps services.
- 5.127 The Authority is keen to ensure that activities such as a consultation by a wholesale provider to amend or cease to provide a wholesale product forms a key part of the relationship between the wholesale service provider and the service taker. Therefore the Authority is of the opinion that such a consultation should be driven by, in this case, JT. However, the Authority is mindful of its regulatory duties and would intervene in this process if it deemed it necessary.

The Authority's Conclusion

- 5.128 The Authority concludes that JT Wholesale should enter into a consultation process to remove 50, 100 and 250 Mbps services only following the successful introduction of a Bitstream service.
- 5.129 The Authority also concludes that, whilst the 50 and 100 Mbps services remain available any material changes to those products should be consulted on by JT. The material changes include, but are not limited to the following:
- Speed changes (upload or download);
 - Contention ratio changes;
 - Introduction of, or changes to, Quality of Service or any form of traffic shaping;
 - Changes to one-off or recurring charges related to the provision of the service, and
 - Changes to the SLA for the service.

Other relevant information

In addition to responding to the questions raised in the Call for Information Sure provided the following information.

- 5.130 To aid the consideration of the proposals in this response Sure provided the following information in relation to its plans to work with those customers who would benefit most from a migration of their services from the current 250 Mbps variant:

Based on Sure's migration plans:	Q1	Q2	Q3	Q4
Subs on 50 Mbps	150	500	800	1500
Subs on 100 Mbps	5400	5300	5200	5100
Total subs on lower speed services	5550	5800	6000	6600

These figures do not include Sure's forecast in relation to any new customers that Sure would intend to gain as a result of it offering these lower speed services within its standard retail portfolio.

6. DRAFT DECISION

6.1 Following its consideration of the responses to the Call for Information, the Authority proposes to issue a direction to JT as follows:

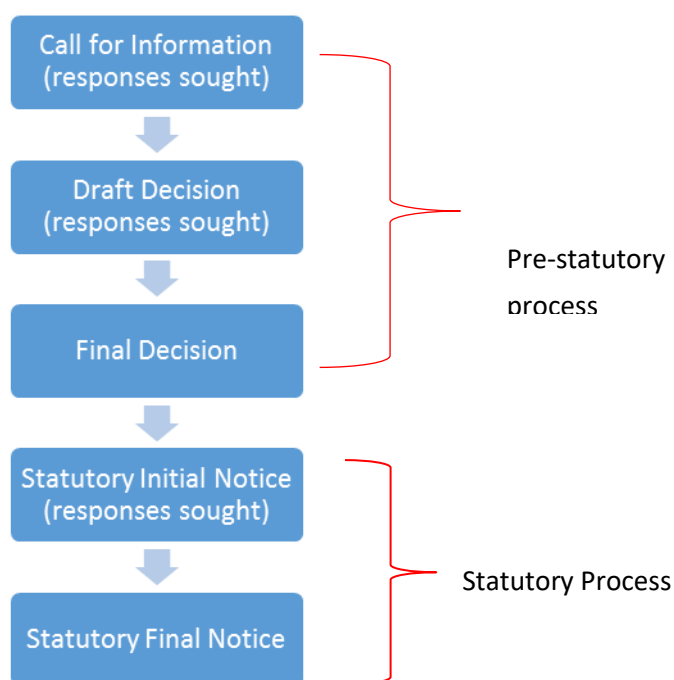
- (a) The States of Jersey Telecoms Policy is clear in its requirement for differentiation of retail services and that this, in the Authority's considered opinion, includes differentiation by speed;
- (b) JT should re-introduce a 100 Mbps wholesale service with a download speed of 10 Mbps at a contention ratio of 40:1;
- (c) The 100 Mbps wholesale service should be introduced with a price of £17.84;
- (d) JT should re-introduce a 50 Mbps wholesale service with a download speed of 5 Mbps at a contention ratio of 40:1;
- (e) The 50 Mbps wholesale service should be introduced with a price of £16.23;
- (f) The 50 and 100 Mbps service should be introduced within 3 months of the Authority issuing its direction on this matter;
- (g) The prices of the 50 and 100 Mbps service should remain fixed for a period of three years from introduction;
- (h) JT should enter into a consultation process with its wholesale customers before making any material changes or seeking to cease the 50, 100 and 250 Mbps service; and
- (i) In addition JT should engage with its wholesale customers to seek an understanding on requirements and demand for additional speeds in addition to the speeds proposed in this Draft Decision

7. THE REGULATORY PROCESS

- 7.1 Stakeholders are invited to provide written representations on the Draft Decision as set out in Section 6. In addition, respondents are invited to raise any other matters they consider relevant in the present context when responding to this Draft Decision.
- 7.2 The Authority will consider all of the responses received, which will inform its assessment on the matters set out herein.

Consultation Process

- 7.3 The Authority has recently introduced a revised process for consultations. The Information Notice, CICRA 18/29 “Regulatory Consultation Process” published in July 2018 outlines the new process to be undertaken before carrying out certain regulatory functions in accordance with the relevant statutory process. This process is set out below in diagrammatical form:



- 7.4 Under the new process there is a new non-statutory process which may be undertaken prior to the statutory process. The non-statutory process consists of a Call for Information, a Draft Decision and a Final Decision. Responses are sought from stakeholders at the Call for Information and Draft Decision stage, following which a Final Decision is issued. This Draft decision is thus the second stage of the pre-statutory process.
- 7.5 Whilst the Authority considers any decision made as part of the pre-statutory process to be the starting point for the statutory process and as a statement of its expectations, the Pre-

Statutory Final Decision (i.e. stage 3 of the above diagram) is not binding where there is a requirement to undertake a statutory process.

- 7.6 After the non-statutory process has been completed, the statutory process will commence by issuing a Statutory Initial Notice. Responses are sought at the Statutory Initial Notice stage, following which the Statutory Final Notice is issued, such decision being final and binding.